

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harry Feigen	Team: Squad #4	CCRB Case #: 201411079	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/29/2014 9:40 PM	Location of Incident: Central Avenue and Slosson Terrace	Precinct: 120	18 Mo. SOL 4/29/2016	EO SOL 4/29/2016	
Date/Time CV Reported Wed, 10/29/2014 10:48 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 10/29/2014 10:48 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Victor Bruno	01602	901239	NARCBSI
2. DT3 Nikolaos Stefopoulos	936	944294	NARCBSI

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Nikolaos Stefopoulos	Abuse: Det. Nikolaos Stefopoulos stopped § 87(2)(b) and § 87(2)(b)	
B.DT3 Nikolaos Stefopoulos	Abuse: Det. Nikolaos Stefopoulos frisked § 87(2)(b)	
C.DT3 Nikolaos Stefopoulos	Abuse: Det. Nikolaos Stefopoulos searched § 87(2)(b)	
D.SGT Victor Bruno	Abuse: Sgt. Victor Bruno frisked § 87(2)(b)	
E.SGT Victor Bruno	Abuse: Sgt. Victor Bruno searched § 87(2)(b)	

Case Summary

On October 29, 2014, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System (Encl. 3A).

On October 29, 2014, at approximately 9:40 p.m., § 87(2)(b) picked up his friend, § 87(2)(b) and the two drove towards Pier 76, a restaurant located on 76 Bay Street in Staten Island. They parked approximately one block from the restaurant, near the intersection of Central Avenue and Slosson Terrace, exited § 87(2)(b)'s car, and started walking up Central Avenue toward the restaurant. While § 87(2)(b) walked, his pants started to slide down his waist. § 87(2)(b) saw this, and offered § 87(2)(b) his belt. § 87(2)(b) took the belt from § 87(2)(b)'s hand, and looped it through his waistband.

Moments later, § 87(2)(b) and § 87(2)(b) were approached by two police officers: Det. Nikolaus Stefopoulos, and Sgt. Victor Bruno. The officers asked for § 87(2)(b) and § 87(2)(b)'s IDs, which they provided (**Allegation A**). Det. Stefopoulos frisked § 87(2)(b) (**Allegation B**), and then inserted his fingers into § 87(2)(b)'s waistband (**Allegation C**). After searching all the way around § 87(2)(b)'s waist, Det. Stefopoulos reached inside of § 87(2)(b)'s pocket, removed his wallet, and searched through its contents (**subsumed within Allegation C**). Sgt. Bruno frisked § 87(2)(b) during that time (**Allegation D**), and subsequently reached into § 87(2)(b)'s pocket, removed his wallet, and searched through its contents (**Allegation E**). No contraband was found on § 87(2)(b) or § 87(2)(b). The officers returned both wallets, and § 87(2)(b) and § 87(2)(b) were released. No one was summonsed or arrested.

Mediation, Civil, and Criminal Histories

Both civilians accepted mediation, but it was rejected by both police officers. Criminal histories could not be searched for § 87(2)(b) or § 87(2)(b) as their NYSID numbers are not known. A notice of claim request was submitted to the Comptroller's office on April 23, 2015 (Encl. 6A). It will be added to the case file upon receipt.

Civilian and Officer CCRB Histories

This is the first complaint filed with the CCRB by § 87(2)(b) or § 87(2)(b) (Encl. 2C and 2D, respectively). Det. Nikolaus Stefopoulos has been a member of service for seven years. He has two previous search allegations, one previous frisk allegation, and one previous stop allegation. None have been substantiated, however (Encl. 2A). Sgt. Victor Bruno has been a member of service for twenty-two years. § 87(2)(g)

Findings and Recommendations

Allegations not pleaded

- Stop – A stop allegation is not pleaded against Sgt. Bruno, as he did not see, but was only alerted to, the purported hand-to-hand transaction between § 87(2)(b) and § 87(2)(b)

Allegation A – Abuse of Authority: Det. Nikolaus Stefopoulos stopped § 87(2)(b) and § 87(2)(b)

The following facts are undisputed. § 87(2)(b) and § 87(2)(b) parked their vehicle near the intersection of Central Avenue and Slosson Terrace in Staten Island, which is a drug prone location. The area was well-lit by street lights at that time. § 87(2)(b) and § 87(2)(b) exited the vehicle and approached each other on the sidewalk next to the vehicle. There, § 87(2)(b) received an object from § 87(2)(b) and then immediately adjusted his front waistband, with his hand possibly entering the waistband itself. No other objects were exchanged and the two had no additional physical contact. § 87(2)(b) and § 87(2)(b) then began to walk down the sidewalk together.

At this time, Det. Stefopoulos and Sgt. Bruno, both dressed in plainclothes, were inside their unmarked car about 30 feet away. Det. Stefopoulos did not see § 87(2)(b) and § 87(2)(b) exit the vehicle. However, he did see the two approach each other, seemingly from opposite directions, and exchange an object which he could not describe, but estimated its size to be smaller than one's hand. Det. Stefopoulos then observed § 87(2)(b) reach towards his waistband in a manner consistent with an attempt to conceal the object. Based on his narcotics experience and training, Det. Stefopoulos believed this exchange to be a hand to hand drug transaction. As a result, he told Sgt. Bruno that he had seen a "hand to hand." Sgt. Bruno did not witness the exchange. The two officers exited their vehicle, approached § 87(2)(b) and § 87(2)(b) and stopped them.

It is in dispute what the exchanged object actually was. § 87(2)(b) and § 87(2)(b) both claimed that § 87(2)(b) handed his unfurled belt to § 87(2)(b). While this is a possibility, the investigation credits that Det. Stefopoulos did not see the belt and that he only saw the two hands make contact, leading him to believe that a small object was exchanged. First, it is unlikely that Det. Stefopoulos would mistake an unfurled belt for potential narcotics. Second, had Det. Stefopoulos seen the belt, he likely would not have approached § 87(2)(b) and § 87(2)(b) as their actions would have been readily apparent. Third, Det. Stefopoulos was driving towards § 87(2)(b) and § 87(2)(b) from behind, making it possible that their bodies obscured the belt from his angle. Finally, Det. Stefopoulos was forthcoming about being unable to observe the object that was exchanged, rather than speculating or characterizing it as an object that bore a resemblance to a specific narcotic.

In addition to Det. Stefopoulos' observations, which are noted above, Det. Stefopoulos added that, upon approach, § 87(2)(b) inserted his hand into his waistband for a second time and pushed the object he had received further down. § 87(2)(b), § 87(2)(g)

In order to stop an individual, an officer must have reasonable suspicion. For a hand to hand drug transaction, an officer has reasonable suspicion if he observes the exchange of an object in a drug-prone location upon the initial contact of two individuals, followed by an attempt to conceal the object upon its receipt. People v. Garcia, 96 A.D3d 481 (2012) (Encl. A14-15) |

§ 87(2)(g)

Allegation B – Abuse of Authority: Det. Nikolaos Stefopoulos frisked § 87(2)(b)

§ 87(2)(b) alleged that he was frisked on his arms, torso, and legs by Det. Stefopoulos. § 87(2)(b) corroborated this claim, and while Sgt. Bruno could not say where Det. Stefopoulos patted on § 87(2)(b)'s body, he acknowledged that some sort of frisk occurred. Det. Stefopoulos admitted to patting the exterior of § 87(2)(b)'s waistband, but denied conducting a more extensive frisk. § 87(2)(b), § 87(2)(g)

Det. Stefopoulos maintained that all of the actions he took in this incident were predicated on his belief that he had probable cause to arrest § 87(2)(b) and § 87(2)(b) based on his observations regarding the purported hand to hand transaction. Det. Stefopoulos did not articulate any reason he had to believe that § 87(2)(b) was armed at the time of the stop, and Sgt. Bruno explicitly stated that there was nothing specific to the individuals being stopped which caused him to believe that they were armed. Det. Stefopoulos did claim that § 87(2)(b) upon being ordered to stop, took several steps backwards and reached for his back pocket, prompting the detective to swat § 87(2)(b)'s hand away from that area. Both civilians denied that § 87(2)(b) made any movements upon being told to stop, however, and Sgt. Bruno corroborated their account. § 87(2)(b), § 87(2)(g)

In order to frisk an individual, an officer must reasonably suspect that he is in danger of physical injury by virtue of the individual being armed. People v. DeBour, 40 N.Y.2d 210 (1976) (Encl. A1-13). Otherwise, he must have probable cause to place the individual under arrest. Generally, to establish probable cause for a hand to hand drug transaction, an officer must observe an exchange of an object for currency in conjunction with other factors, such as furtive movements, or being in a narcotics prone location (People v. Jones, 90 N.Y.2d 835 (1997) (Encl. A19-20); People v. Smith, 60 A.D.3d 456 (2009) (Encl. A16)). In the absence of an observed currency exchange, the observed conduct of the individual in combination with the other circumstances of the transaction must be sufficiently indicative of a drug transaction such that a prudent person with the officer's training and experience would think it more likely that the individual committing the observed conduct committed a drug transaction than not (People v. Troy F., 138 A.D.2d 707 (1988) (Encl. A17-18)).

§ 87(2)(b), § 87(2)(g)

Allegation C – Abuse of Authority: Det. Nikolaos Stefopoulos searched § 87(2)(b)

It is undisputed that Det. Stefopoulos' frisk of § 87(2)(b) did not reveal anything to the officer indicative of a weapon. It is undisputed that, following the frisk of § 87(2)(b) Det. Stefopoulos inserted his fingers into § 87(2)(b)'s waistband and searched the front of his waist.

It is undisputed that there were no additional factors observed by Det. Stefopoulos between his approach of § 87(2)(b) and his search of § 87(2)(b) which would have indicated that § 87(2)(b) had committed a crime, as Det. Stefopoulos claimed he did not smell a strong odor of marijuana coming from § 87(2)(b)'s waist until after he had inserted his fingers into § 87(2)(b)'s waistband.

In order to search an individual, an officer must have probable cause to effect an arrest. Otherwise, exigent circumstances must be present, such as a reason to believe the individual is armed. People v. Williams, 217 A.D.2d 1007 (1995) (Encl. A21).

§ 87(2)(b), § 87(2)(g)

Allegation D – Abuse of Authority: Sgt. Victor Bruno frisked § 87(2)(b)

It is undisputed that Sgt. Bruno patted § 87(2)(b) down on his chest and waist. Sgt. Bruno stated that he frisked § 87(2)(b) because he had made an arrest in the same location several months prior in which the perpetrator was armed. Sgt. Bruno testified that no other factors led to the frisk and that there was nothing specific to § 87(2)(b) indicating that he was armed.

It is undisputed that § 87(2)(b) did not make any movements upon being told to stop by the police, and that there were no bulges on his person. It is undisputed that Sgt. Bruno made no observations himself which led to his stop and subsequent frisk of § 87(2)(b). Sgt. Bruno's actions were predicated on Det. Stefopoulos' report of a "hand to hand." It is undisputed that the officers immediately exited their vehicle to approach § 87(2)(b) and § 87(2)(b) following this communication between the officers, with no other communication occurring regarding what Det. Stefopoulos observed prior to stopping the individuals.

Absent probable cause, an officer must reasonably suspect that he is in danger of physical injury by virtue of an individual being armed to frisk that individual DeBour.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation E – Abuse of Authority: Sgt. Victor Bruno searched § 87(2)(b)

It is undisputed that Sgt. Bruno had no reason to believe that § 87(2)(b) was armed, and that no other exigent circumstances were present during the stop.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) In § 87(2)(b)'s statement, he alleged that Sgt. Bruno reached inside of his pocket immediately after he finished patting § 87(2)(b) down. § 87(2)(b) did not observe Sgt. Bruno insert his hand into § 87(2)(b)'s pocket at any point during the incident, but he did observe Sgt. Bruno looking through the contents of § 87(2)(b)'s wallet immediately following his frisk of § 87(2)(b).

Sgt. Bruno denied that he reached inside of any of § 87(2)(b)'s pockets during the stop, and Det. Stefopoulos claimed that he did not observe Sgt. Bruno search § 87(2)(b) at any point either.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Team: _____

Investigator: _____

	Signature	Print	Date
Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date